

St. Regis Mohawk Tribal Court

Johanne Jackson,)	
Appellant)	DECISION AND ORDER
)	
-V-)	Case No.: 11-LND-00006/11-CIV-00006
)	
Arlene Baker,)	
Respondent)	

Factual Background

Louis Chubb, in his last will and testament dated November 13th, 1965 named his daughter Margaret Porter to act as the executor of his estate upon his passing. In this instrument he also directed that: "all the rest, residue and remainder of my estate, both real and personal, I give, devise and bequeath to my daughter, Margaret Porter." *See*, Louis Chubb Last Will and Testament November 13th, 1965.

Mrs. Margaret Porter and Mr. Howard Porter (who is not an enrolled member of the St. Regis Mohawk Tribe) lived as a couple for approximately 50 years. After returning to Akwesasne in 1994, they built a house for themselves on the property inherited by Margaret Porter from her father, Mr. Louis Chubb. From the record it appears the foundation and structure of this home was paid for by Howard Porter as is evidenced by check[s] in the record. *See*, Cashier's Check Payable to Style Craft Homes September 20th, 1994.

In ensuing years Margaret Porter sold multiple parcels of property to various family members that were part of the original Louis Chubb (her father's) estate. These transactions were conducted by Margaret Porter as her husband was not an enrolled member of the SRMT and therefore could not own or deed property on the SRMIR in accordance with SRMT Law. *See*, SRMT LDRO (V) (B).

Margaret Porter passed away intestate on June 7th, 2007 leaving two heirs, her daughter Ms. Cecelia Arlene Baker, and her son, Mr. Louis Roundpoint. On June 27th, 2007 Arlene Baker wrote to the St. Regis Mohawk Tribal Council requesting that she be "notified of any and all transactions concerning my mother's estate, the late Margaret Chubb Porter." *See*, June 27th, 2007 Letter to SRMT. She further stated, "There will be no further transactions regarding my mother's estate until everything has been settled between myself and my brother, Louis Roundpoint." *Id*.

SRMT Sub-Chief Ron LaFrance Jr., in a letter to Ms. Arlene Baker dated August 24th, 2007 informed Ms. Baker that the SRMT Tribal Council, "has granted your step-father, Howard Porter life use of your late mother's estate. Mr. Porter is free to use the estate as he sees fit for the rest of his natural life. It is also with the understanding that Mr. Porter cannot sell, trade or barter any part of the estate. Mr. Porter has agreed to this." *See*, Ron LaFrance Jr. Letter to Arlene Baker August 24th, 2007. The letter further stated that, "At the time of his (Mr. Porter) passing the property and

all of the assets associated with it will be divided equally among you and your brother (Louis Roundpoint)." *Id.*

On September 25th, 2007 the SRMT passed Tribal Council Resolution #2007-77 naming Ms. Arlene Baker and Mr. Louis Roundpoint as the Co-Executors of the Estate of the late Margaret Chubb Roundpoint Porter. *See*, TCR 2007-77 September 25th, 2007. On September 26th, 2007 Mr. Howard Porter prepared his last will and testament. In this document he named Ms. Johanne Jackson as the executor of his estate, and also highlighted how he wished for his estate to be distributed. *See*, Howard Porter Last Will and Testament September 26th, 2007.

In a letter dated February 27th, 2008 Ms. Arlene Baker wrote to the St. Regis Mohawk Tribal Council stating that; "I love my stepfather and want him to be comfortable in the home he shared with my mother for the rest of his life." *See*, Arlene Baker letter to SRMT Tribal Council February 27th, 2008.

On April 14th, 2008 Ms. Arlene Baker wrote another letter to the St. Regis Mohawk Tribe informing them that; "in the event I am unable to make any decisions in regards to my estate, inheritance, assets or future interests, I give permission and/or power of attorney to my daughter, Serena J. Waterman-Adkins to act on my behalf." *See*, Letter to St. Regis Mohawk Tribe April 14th, 2008.

On April 17th, 2008 Ms. Arlene Baker wrote another letter to the St. Regis Mohawk Tribe stating that she has not given authorization for "any person or entity to act or speak on my behalf concerning the interest I have in the estate of my mother, Margaret Irene Porter." *See*, Letter to St. Regis Mohawk Tribe April 17th, 2008. She further requested; "I am asking to be notified directly by the St. Regis Mohawk Tribe either in writing or by telephone if there are any decisions or authorizations that need to be made by me concerning the interest I have in my mother's estate, as well as my own assets." *Id.*

In another letter dated April 17th, 2008 Ms. Arlene Baker wrote to SRMT Tribal Clerk Corleen Jacco requesting, "information regarding the estate of my late mother, Margaret Irene (Chubb/Roundpoint) Porter." *See*, April 17th, 2008 Letter to Corleen Jacco.

The SRMT Tribal Council in a letter dated July 9th, 2008 to Mr. Howard Porter, informed him that he is guaranteed life usage of the house that he and his wife Margaret shared, and that, "you are free to decide what will become of the contents of the house." *See*, July 9th, 2008 Letter from SRMT Tribal Council to Howard Porter.

A letter dated July 18th, 2008 from SRMT Tribal Council to Arlene Baker and Louis Roundpoint provided the decision reached by the SRMT Tribal Council regarding the division of property in the estate of Margaret Porter with respect to the case at bar. Ms. Baker and Mr. Roundpoint were recognized as co-owners of the house located at 1520 State Route 37 and the property that it sits upon, with the understanding that Mr. Howard Porter is still entitled to a life estate for that house and property for his natural life. *See*, July 18th, 2008 Letter SRMT Tribal Council to Arlene Baker and Louis Roundpoint.

Mr. Howard Porter in a letter dated October 6th, 2009 requested that Tribal Council Resolution #2007-77 be rescinded. Mr. Porter requested that; "This letter also serves notice that I hereby immediately request the return of my late wife's property." *See*, October 6th, 2009 Letter from Howard Porter to SRMT Tribal Council.

Things proved to be relatively calm until Ms. Arlene Baker in a letter dated June 5th, 2011 informed a Malcolm Chubb that; "I Arlene Roundpoint Baker the legal owner of the residence at 1520 State Road Route 37 did not give you permission to occupy the house, therefore I demand for you to vacate immediately!" *See*, Letter from Arlene Baker to Malcolm Chubb June 5th, 2011. It appears that Mr. Chubb had moved into the home that Mr. Howard and Mrs. Margaret Porter had shared together.

Mr. Howard Porter passed away on June 13th, 2011, leaving Ms. Johanne Jackson to act as the executrix of his estate as provided in his last will and testament dated September 26th, 2007.

In a letter dated July 3rd, 2011 to the St. Regis Mohawk Tribal Police written by Ms. Arlene Baker, a request was made to have Malcolm Chubb removed from the house and property located at 1520 State Route 37 on the SRMIR. *See*, Letter to St. Regis Mohawk Tribal Police July 3rd, 2011.

Ms. Marcella David, a sister of Margaret Porter, in a letter to the SRMT Tribal Council dated July 5th, 2011 stated that; "Margaret told my sister's Ruth, Mary and I what her wishes are being of sound mind and body in the years 2005-06. Those are that Margaret did not want her daughter Arlene or her son Louie to have her house or the land that the house is on." *See*, Marcella David Letter to SRMT Tribal Council July 5th, 2011. Ms. David further stated that, "Margaret and Howard Porter told us that if anything should happen to them the house and the land that it's on should go back to the estate of Louie and Hattie Chubb." *Id.*

On August 2nd, 2011 Ms. Johanne Jackson filed an appeal of the Tribal Council Resolution #2007-77 and the decision to appoint Ms. Arlene Baker and Mr. Louis Roundpoint, the children of Margaret Porter as the executors of the estate of Margaret Porter. Further, Ms. Jackson also requests that the decision by the SRMT to give the house Mr. Howard Porter and Mrs. Margaret Porter occupied during their marriage to Margaret Porter's children Arlene Baker and Louis Roundpoint be reversed.

Procedural History

On August 2nd, 2011 Johanne Jackson, on behalf of Howard Porter, filed an action in St. Regis Mohawk Tribal Court to repeal St. Regis Mohawk Tribal Council Resolution number 2007-77, which granted executor status to Arlene Baker and Louis Roundpoint for the estate of Margaret Porter (Mr. Howard Porter's wife).

A twenty (20) day civil summons was issued on August 3rd, 2011 to be served along with the complaint upon the defendant's named, Ms. Arlene Baker and Mr. Louis Roundpoint.

Proof of service that the complaint and civil summons were served upon the Defendant's Ms. Arlene Baker and Mr. Louis Roundpoint by Ms. Johanne Jackson was timely filed with the Court on August 8th, 2011.

A request for an extension of one week to file a written answer by Counsel for Ms. Arlene Baker, Ms. Lorraine White, Esq., was received on August 30th, 2011. The request was granted on August 31st, 2011 by the Court and notice of the extension was sent to all parties involved.

On September 9th, 2011 a motion was filed by Ms. Johanne Jackson with the Court, requesting that an injunction be granted, restricting the Defendants Ms. Arlene Baker and Mr. Louis Roundpoint from taking any action regarding the property in dispute until the Court reached a final decision in the matter. Proof of service was filed with the Court on September 9th, 2011 by Ms. Johanne Jackson with respect to the motion filed with the Court on September 9th, 2011.

On the same date, the Court also received the Defendant's answer along with a motion to dismiss from Ms. Arlene Baker's attorney Ms. Lorraine White. Accompanying the answer and motion to dismiss was proof of service that the aforementioned documents were served upon the Complainant.

A notice of preliminary hearing was sent to all parties in the matter on September 19th, 2011 with the hearing to be held in St. Regis Mohawk Tribal Court on October 4th, 2011.

On October 3rd, 2011 the Court received a letter from Mr. Louis Roundpoint asking that he be released from the case as he and his sister Ms. Arlene Baker reached an agreement in which Ms. Baker would "buy out" Mr. Roundpoint's interest in the Margaret Porter estate house and property.

A pre-trial hearing was held in St. Regis Mohawk Tribal Court in the matter of Jackson v Baker/Roundpoint on October 4th, 2011. From this hearing an order was issued by the St. Regis Mohawk Tribal Court stating that Mr. Louis Roundpoint is given 30 days to initiate proceedings against his sister based on his claims that he was not paid by his sister Ms. Arlene Baker for his interest in the Margaret Porter house and land known as Lot #681.

Notice of hearing letters were sent to all parties involved on June 4th, 2012 indicating that a hearing would be held in St. Regis Mohawk Tribal Court in the matter of Jackson v Baker/Roundpoint on July 17th, 2012. A pre-trial hearing was held in St. Regis Mohawk Tribal Court on July 17th, 2012 in the matter of Jackson v Baker. Also on this day, Ms. Johanne Jackson motioned the Court to include in the record a letter dated July 24th, 2008 regarding the matter at bar. The Court contacted Ms. Arlene Baker's attorney asking if there was any objection to this motion. There was no objection from Ms. Baker's attorney so the letter was added to the record.

The Court subsequently issued a decision and order on July 17th, 2012 removing Mr. Louis Roundpoint as a co-defendant from the case at bar. This was due to his failure to prosecute his interests in the matter as directed by the Court.

Discussion

The Appellant, Ms. Johanne Jackson acting as executrix for the estate of Mr. Howard Porter, filed this appeal with respect to the issuance of St. Regis Mohawk Tribal Council Resolution number 2007-77 which named Ms. Arlene Baker and Mr. Louis Roundpoint the co-executors of the estate of Margaret Porter, their mother. Appellant argued that the house which Mr. Howard Porter and Mrs. Margaret Porter shared, and the property on which it sits upon, should be returned to the estate of Mr. Howard Porter as he paid for the house and the development of the property.

Mr. Howard Porter and his wife Mrs. Margaret Porter were married in 1989 but apparently shared a life together for over 50 years. After living for much of their life together outside of the St. Regis Mohawk Indian Reservation they moved back to Akwesasne, laid out a house foundation and built a home at 1520 State Route 37 in and around 1994.¹

Although the record before the Court seems to show that Mr. Howard Porter did in fact pay for the cost of the foundation and the cost of the housing unit placed upon the foundation, Mr. Howard Porter was not an enrolled member of the St. Regis Mohawk Tribe. Mrs. Margaret Porter was an enrolled member of the St. Regis Mohawk Tribe and had two children, Ms. Arlene Baker and Mr. Louis Roundpoint. It does not appear that Mr. Howard Porter and Mrs. Margaret Porter had any children from their relationship/marriage. Mrs. Margaret Porter appears to have, at a minimum, provided the land on which to construct the house which was helped paid for by Mr. Howard Porter.

The Appellant, Ms. Johanne Jackson wishes to have the TCR #2007-77 rescinded. This TCR appointed Mrs. Margaret Porter's children, Ms. Arlene Baker and Mr. Louis Roundpoint co-executors of her estate. Mr. Howard Porter made his objections to this SRMT Tribal Council TCR prior to his passing.²

Ms. Arlene Baker is the sole Appellee in the matter at bar as a prior decision of the St. Regis Mohawk Tribal Court ordered that, "the Court finds that Mr. Louis Roundpoint has failed to prove to the Court that he is a 'necessary party' to the pending suit. As such, Mr. Roundpoint does not have standing in the case at bar and is removed as a Co-defendant in the case at bar." *See, Johanne Jackson v Arlene Baker & Louis Roundpoint 11-LND-00006/11-CIV-00006*. The decision to remove Mr. Roundpoint as a co-defendant in the matter at bar came about when Mr. Roundpoint claimed that his sister, Ms. Arlene Baker, had apparently offered to "buy out" Mr. Roundpoint's interest in the house and property at Lot #681. Upon this offer Mr. Roundpoint then relinquished his claim to Lot #681 and the house on that property.³

Mr. Roundpoint further affirmed this agreement by writing to the Tribal Court asking that he be released from the case as a co-defendant as he and his sister, Ms. Arlene Baker had an

¹ See, Record Bank Cashier Checks.

² See, October 6th, 2009 Letter from Howard Porter to SRMT Tribal Council.

³ See, July 23rd, 2011 Relinquishment Statement Signed and notarized by Louis Roundpoint.

agreement in which she “promised to buy me out for my half of the house and property that was left to my sister and me”. *See*, October 3rd Letter to Court Signed by Louis Roundpoint.

The Court had multiple conferences with Mr. Roundpoint on the issue of the relinquishment statement and the agreement between Ms. Arlene Baker and himself concerning the proposed offer by Ms. Baker to “buy out” Mr. Roundpoint. The Court informed Mr. Roundpoint that he had 30 days from the delivery of an order dated January 24th, 2012 to initiate an action regarding that matter. Mr. Roundpoint never initiated any action as directed by the Court, therefore the decision was made to remove Mr. Roundpoint as a co-defendant in the matter at bar.⁴

Mr. Howard Porter was granted a life estate for the house he helped pay for, which was on the Margaret Porter owned land. He continued to enjoy the use of the domicile and the property that it sat upon, pursuant to a letter issued by the SRMT Tribal Council in 2008.⁵ Although the St. Regis Mohawk Tribe’s Land Dispute Resolution Ordinance would not go into effect until February 2010, the process of granting a life estate to an enrolled SRMT member’s non-enrolled spouse is specifically provided for in the SRMT LDRO.⁶

Analysis

The Appellant raises the issue of the SRMT TCR 2007-77, that granted co-executor status of the estate of Margaret Porter to her two children, Ms. Arlene Baker and Mr. Louis Roundpoint. As is evident, the appointment by the SRMT of Ms. Arlene Baker and Mr. Louis Roundpoint as co-executors of Margaret Porter’s estate caused conflict when the Appellant (Ms. Johanne Jackson), was made executor of the Howard Porter estate. Appellant was made executor by being named to that role in Mr. Howard Porter’s last will and testament, and NOT by any SRMT action. Further conflict is engendered by the fact that clearly portions of the Howard Porter and Margaret Porter estates ‘overlap’ with respect to the land and home which is the major subject of this action.

We can begin by recognizing that the St. Regis Mohawk Tribal Council is vested with the authority to issue use and occupancy deeds for lands within the St. Regis Mohawk Indian Reservation.⁷ Furthermore, the SRMT Tribal Council has recently been in the practice of appointing administrators/executors to the estates of deceased tribally enrolled members of the SRMT by TCR.

As the duly recognized government of the St. Regis Mohawk Indian Reservation, the SRMT Tribal Council assumed authority to make appointments of executors/administrators of deceased tribally enrolled members, which does not appear to contradict SRMT law. Mr. Howard Porter, and subsequently Ms. Johanne Jackson, acting as Mr. Porter’s executrix, have objected to the issuance of SRMT TCR #2007-77, which appointed Ms. Arlene Baker and Mr. Louis Roundpoint as co-executors of Margaret Porter’s estate.

⁴ *See*, SRMT Decision July 17th, 2012.

⁵ *See*, July 9th, 2008 Letter from SRMT Tribal Council to Howard Porter.

⁶ *See*, SRMT LDRO VI (3).

⁷ *See*, SRMT LDRO V (A).

Ms. Johanne Jackson as the executrix of Mr. Howard Porter's estate, and Ms. Arlene Baker and Mr. Louis Roundpoint as the co-executors of Mrs. Margaret Porter's estate, seem to bring an issue of competing executorships to the matter at bar. The Court is not of the opinion that one executor is more valid than the other. The issue in this instance is who are the executors acting on behalf of, and what rights under SRMT law do those estates have to property that is both personal and in the form of land, which is located on the St. Regis Mohawk Indian Reservation.

In being named co-executors of the estate of Mrs. Margaret Porter, it was the SRMT Tribal Council, not the SRMT LDRO which granted Ms. Arlene Baker and Mr. Louis Roundpoint the authority to dispose of their mother and stepfather's marital home as they saw fit, as they are the co-executors of their mother's estate. The Court notes that while the SRMT Tribal Council has assumed the authority to name executors/administrators to an estate, there are no rules to guide those individuals who have been granted these statuses.

As the SRMT appointed co-executors of Mrs. Margaret Porter's estate, Ms. Arlene Baker and Mr. Louis Roundpoint were not operating outside the law in deciding how the house that Mrs. Margaret Porter and Mr. Howard Porter shared together. It is not the SRMT LDRO which provides for this authority, as the Court has already noted, it is the SRMT Tribal Council which has assumed authority to appoint administrators/executors of deceased tribally enrolled member's estates.

Next, although the SRMT LDRO was not in effect when Mrs. Margaret Porter passed away in 2007, the LDRO has provisions which provide the Court with the groundwork to apply the LDRO to this dispute. Wherein, the SRMT LDRO provides that, "The Tribal Court may review any appeal from a Tribal Council Final Decision made no more than ten (10) years prior to the Effective Date of this Ordinance." See, SRMT LDRO XV (C) (1).

This 10 year time period was opened when the SRMT Tribal Council named Ms. Arlene Baker and Mr. Louis Roundpoint co-executors of the estate of Mrs. Margaret Porter with the passage of TCR #2007-77 in 2007. When the SRMT Tribal Council rendered a decision on the division of 24.9 acres in a letter dated July 18th, 2008 between Ms. Arlene Baker and Mr. Louis Roundpoint, the window for appeal was triggered again. It is because of these decisions by the SRMT Tribal Council which, although the SRMT LDRO was not in effect at the time of Mrs. Margaret Porter's passing, creates the right to review a Tribal Council decision under the SRMT LDRO.

Therefore, after the passing of Mrs. Margaret Porter in June 2007, then the passing of the SRMT LDRO with its '10 year rule', followed by the passing of Mr. Howard Porter where he named the Appellant (Ms. Johanne Jackson) as executor of his estate, which has provided Ms. Jackson the requisite standing to pursue this case/action on behalf of the estate of Mr. Howard Porter. Again, it is the overlap of the two (2) estates (Margaret Porter and Howard Porter) which creates this current case at bar.

Next, Mrs. Margaret Porter passed away intestate on June 7th, 2007. The SRMT LDRO provides guidance as to the manner in which intestacy land issues of tribally enrolled members are to occur. Under the LDRO the first "in line" to receive the decedent's land upon their passing are; "The surviving Tribal member spouse shall inherit the possessory interest formally held by the

deceased spouse.” See, SRMT LDRO V (E) (1). In the matter at bar, Mr. Howard Porter was NOT an enrolled member of the SRMT, therefore the intestacy provision for “tribal member spouses” does not apply as he was not enrolled with the SRMT.

Although Mr. Howard Porter appears to have paid for the house that was deemed by the SRMT Tribal Council to be transferred to Ms. Arlene Baker and Mr. Louis Roundpoint, he was provided a life estate so that he could enjoy the use of the home and property for the rest of his natural life. This is consistent with SRMT LDRO provisions which permit the creation of such life estates.⁸

Next, under the SRMT LDRO if there is no surviving “tribal member” spouse the land of a tribally enrolled member would next pass to the surviving tribal member children.⁹ In the case at bar this would be Ms. Arlene Baker and Mr. Louis Roundpoint, as they are the only surviving tribal member children of Mrs. Margaret Porter. In this case they are correctly identified by the SRMT Tribal Council as the lawful inheritors of the land in the estate of Mrs. Margaret Porter. This is consistent with the intestacy provisions of the SRMT LDRO.

The Appellant acting as the executrix for the estate of Mr. Howard Porter’s argument fails in the same way that Mr. Porter’s argument would fail. Although the Appellant appears to be an enrolled member of the SRMT, her role as the executrix in the estate of a non-enrolled member of the SRMT does not convey membership to the decedent OR make his estate that of a tribally enrolled member. As the Court highlighted previously, under the SRMT LDRO a non-member spouse of an enrolled member may file a land dispute, but it is limited to seeking a “life estate” for use of the land in question. Upon the non-member spouse’s passing the property then reverts to a tribally enrolled member under the LDRO. Therefore, as the Appellant is acting on behalf of a non-member’s estate, it has the same effect as if the non-member themselves had filed this action.¹⁰

At this point we must highlight a rather simple but complicated point. In the case at bar, in the record before us, a deed was issued to Ms. Arlene Baker for the property known as Lot #681.¹¹ In this decision we do NOT hold that Ms. Baker received any SRMT Use and Occupancy Deed because she was appointed as a co-executor of the Margaret Porter estate. What we are holding, is that by operation of the SRMT LDRO, in particular the provisions with respect to intestate distribution¹², Ms. Arlene Baker is entitled to the SRMT Use and Occupancy Deed that was issued to her.

Based upon our prior decision dated July 17th, 2012 it is clear that Mr. Louis Roundpoint relinquished his right[s] to the land known as Lot #681, and therefore, only Ms. Arlene Baker is entitled to receive a SRMT Use and Occupancy Deed for this property. Again, this is NOT because of her appointment as executor of her mother’s estate, but by operation of the SRMT LDRO.

⁸ See, SRMT LDRO VI (A) (3).

⁹ See, SRMT LDRO V (E) (2).

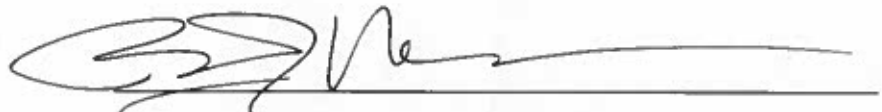
¹⁰ Although we may be sympathetic to the harshness of this conclusion, we can only provide that it is the conclusion we reach under the SRMT LDRO. Therefore, any alteration of the result would have to come via an amendment to the SRMT LDRO.

¹¹ See, SRMT Use and Occupancy Deed July 27th, 2011.

¹² See, SRMT LDRO V (E) (2).

Therefore, the Court finds that the Appellant has failed to show that SRMT TCR #2007-77 should be rescinded as the SRMT Tribal Council was acting in their usual capacity by appointing Ms. Arlene Baker and Mr. Louis Roundpoint as co-executors of their mother's estate. The Court finds that in accordance with the intestacy provisions of the SRMT LDRO, and the fact that Mr. Roundpoint failed to take action on his claim to the house and land known as Lot #681, Ms. Arlene Baker is entitled to the land known as Lot #681 located at 1520 State Route 37 Akwesasne. Further, because Ms. Arlene Baker was acting within her legal rights as the executor of the estate of Mrs. Margaret Porter, the Court finds that Ms. Arlene Baker is the rightful owner of the housing unit that it located on the land known as Lot #681.

Signed by my hand this 17th day of December 2014.



Peter J. Herne, Chief Judge St. Regis Mohawk Tribal Court

